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Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Federal-State Joint Board on Universal Service ) CC Docket No. 96-45  
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Dobson Cellular Systems, Inc. )  
American Cellular Corporation )  
 )  
Joint Petitions for Designation as Eligible )  
Telecommunications Carriers in the State of )  
New York )

To: The Commission

**REPLY COMMENTS OF DOBSON CELLULAR SYSTEMS, INC. AND AMERICAN  
CELLULAR CORPORATION**

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## SUMMARY

The initial comments challenging Dobson's ETC petitions in New York notably fail to refute the fundamentals of Dobson's strong case for its ETC designation, including the benefits Dobson will bring to address the unique challenges of geographic isolation faced by rural consumers, larger local calling areas, and the significant infrastructure investment that Dobson proposes to make with its ETC funding.

Instead, commenters raise meritless objections to points thoroughly addressed in Dobson's petitions, such as cream skimming. Significantly, however, the majority of the opposing commenters' arguments do not actually challenge Dobson's petitions per se. Rather, they challenge the Commission's existing rules implementing the requirement in section 214(e) that designating regulators consider for competing carriers' ETC applications, which are irrelevant to consideration of Dobson's individual petitions under the existing rules.

The weakness of the challenges to Dobson's petitions further demonstrates that the public interest will be served by expeditious grant of the petitions.

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CELLUAR CORPORATION**

Dobson Cellular Systems, Inc. and American Cellular Corporation (collectively, “Dobson”) hereby file this reply to comments submitted with respect to its Joint Petitions for Designation as Eligible Telecommunications Carriers (“ETC”) in the State of New York (the “Petitions”).<sup>1</sup> As discussed herein, none of the comments filed in opposition to the Petitions present any basis for denial or delay of the Petitions. Dobson’s Petitions fully address and satisfy all of the statutory and FCC requirements under Section 214(e)(6) of the Communications Act, 47 U.S.C. Section 214(e)(6), and Section 54.101 of the Commission’s rules, 47 C.F.R. Section 54.101, as well as the most recent pronouncements by the full Commission in the

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<sup>1</sup> See Joint Petition for Designation as Eligible Telecommunications Carriers in the State of New York (No Rural Redefinition Requested), *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (filed May 3, 2004) (“No Redefinition Petition”); Joint Petition for Designation as Eligible Telecommunications Carriers in the State of New York (Rural Redefinition Requested), *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (filed May 10, 2004) (“Redefinition Petition”); see also Parties are Invited to Comment on Petitions for Eligible Telecommunications Carrier Designations, *Public Notice*, CC Docket No. 96-45, DA 04-1445 (rel. May 21, 2004).

*Virginia Cellular* and *Highland Cellular* orders.<sup>2</sup> Dobson also clearly demonstrated the substantial public benefits ETC designation would create for the affected rural subscribers. Accordingly, the Commission should expeditiously grant the Petitions so that Dobson may utilize universal service support in order to deliver high-quality, beneficial supported services to residents of rural areas in New York.

# **I. NOTHING RAISED IN THE COMMENTS CHALLENGES THE CENTRAL ARGUMENTS FOR GRANTING DOBSON’S ETC PETITIONS**

Commenters opposing Dobson’s Petitions have not demonstrated that the Petitions do not meet all of the FCC’s relevant rules and orders. Specifically, none of the opposing commenters refuted, much less addressed, the many unique benefits for rural areas that Dobson has demonstrated would result from grant of the Petitions. These commenters also did not address the substantial effort and commitment to providing high-quality wireless services to rural areas that Dobson has undertaken since its inception.

The opposing commenters’ silence on the merits of Dobson’s Petitions shows that they cannot deny the many substantive reasons set forth in the Petitions supporting grant of ETC designation. In fact, in order to best demonstrate why the Petitions should be granted, it is most instructive for the Commission to consider what the commenters did not address:

- No response denying the unique advantages shown by Dobson of service mobility or Dobson’s intentions to provide high-quality advanced data and information services (including broadband) to rural areas.<sup>3</sup> In rural areas, customers who are away from their

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<sup>2</sup> Federal-State Joint Board on Universal Service; *Virginia Cellular, LLC* Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45, *Memorandum Opinion and Order*, 19 FCC Rcd 1563, 1574-80 (2004) (“*Virginia Cellular*”) (establishing public interest criteria); Federal-State Joint Board on Universal Service; *Highland Cellular, Inc.*, Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45, *Memorandum Opinion and Order*, 19 FCC Rcd 6422, ¶¶20-33 (2004) (“*Highland Cellular*”) (elaborating on public interest requirements).

<sup>3</sup> Citizens Telecommunications Company of New York (“Citizens”) noted that mobility advantages are not a supported service. *See* Citizens Comments at 7. However, such advantages are properly considered as public interest factors. *See Virginia Cellular*, 19 FCC Rcd at 1576; *Highland Cellular* at ¶ 23.

landline phone, such as along isolated roads, may have no other options but wireless service for use in emergency situations.

- No response denying the unique benefit of larger local calling areas and fewer toll charges made possible by Dobson's wireless service offering.
- No response to Dobson's proposed expenditures, consistent with the requirements of *Virginia Cellular* and *Highland Cellular*, to improve and expand service to remote areas – expenditures that would not and could not be made but for receipt of universal service funding. Dobson carefully considered how it could best use universal service support and made service commitments consistent with *Virginia Cellular* and *Highland Cellular*. Such commitments clearly illustrate the true purpose and benefits of universal service.
- No response to the fact that Dobson is constrained by intense competitive forces on a nationwide level and thus cannot raise rates, unlike its rural counterparts who have benefited from years of universal service support and are afforded a guaranteed rate of return.
- No response to how Dobson constructed its network without the benefit of universal service funding, unlike its rural wireline counterparts, while Dobson has been a substantial contributor to the USF, essentially subsidizing its wireline competitors who now oppose Dobson's ETC designation.
- No response to Dobson's rational and realistic explanation for why it now seeks universal service support. Facing higher deployment costs resulting from technology changes, Dobson must seek funding in order to ensure that rural subscribers receive continuing improvement in service levels and a level of service comparable to what is available to urban subscribers.

Given the showings made in the Petitions that grant of ETC status would be consistent with all statutory and regulatory prerequisites and would further the public interest, and the lack of any convincing or relevant objections in the initial round of comments, the FCC should follow its recent line of decisions in *Virginia Cellular* and *Highland Cellular* and grant Dobson's Petitions.

## **II. THE ARGUMENTS RAISED BY COMMENTERS IN OPPOSITION ARE MERITLESS AND HAVE NOT REFUTED THAT DOBSON SATISFIES ALL APPLICABLE CRITERIA FOR ETC DESIGNATION**

As noted above, commenters have not refuted the numerous factors set forth in the Petitions showing that Dobson's designation in New York will advance universal service.

Furthermore, the few arguments that are raised in opposition to Dobson's designation are without merit.

**A. Dobson's ETC Petitions Raise No Cream Skimming Concerns.**

Both Citizens and NYSTA raised concerns regarding the disparities in population densities in the Citizens Telecom-NY study area.<sup>4</sup> As an initial matter, as Dobson noted in its Redefinition Petition, Citizens has disaggregated its support, which substantially reduces any potential for cream skimming concerns.<sup>5</sup> Once a rural incumbent local exchange carrier ("ILEC") disaggregates and targets support under Path 3, as Citizens has done, any support Dobson will receive as an ETC will be consistent with the Citizens' own determination of how support should be targeted.<sup>6</sup> As argued by the Rural Cellular Association in a filing with the Commission relating to *Highland Cellular*, disaggregation already sends the appropriate signals to competitive entrants. If disaggregation is implemented, CETCs do not receive support for the densely populated portions of a service area.<sup>7</sup> In more sparsely populated portions of a study area, CETCs will receive varying amounts of high-cost support. As such, if a CETC wishes to gain support, "it can only do so by constructing facilities in the high-cost zones, which is precisely where a competitor should be focused – on consumers who currently have the fewest telecommunications choices."<sup>8</sup> Because Dobson has no "great disparities" comparable to those

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<sup>4</sup> Citizens Comments at 9; New York State Telecommunications Association, Inc. ("NYSTA") Comments at 8. Furthermore, Citizens argues that every time a carrier seeks redefinition, it must obtain a recommendation from the Joint Board. Citizens Comments at 7-8. Requiring competitive ETCs to obtain a Joint Board recommendation each time redefinition is sought is not required by a Commission rule or policy and is completely impractical.

<sup>5</sup> Redefinition Petition at 17.

<sup>6</sup> *Id.* at 13.

<sup>7</sup> *Ex Parte* Communication of the Rural Cellular Association, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, at 6-7 (filed Nov. 11, 2003).

identified in *Virginia Cellular* or *Highland Cellular*, Citizens' disaggregation removes any remaining cream skimming concerns.

Furthermore, as Dobson described in the Redefinition Petition, the population density disparity between served and unserved wire centers in Citizens' study area is 2.9 times, with a 114 population density for wire centers served versus 39 for wire centers unserved.<sup>9</sup> Dobson noted that the density disparity of 2.9 was far less than the 8 times density disparity found to be problematic in *Virginia Cellular*.

In *Highland Cellular*, the Commission found that the ETC designation of Highland in certain wire centers of Verizon South raised cream skimming concerns.<sup>10</sup> Specifically, the Commission found that, "although the wire centers in Verizon South's study area that Highland Cellular would be able to serve include two low density wire centers, approximately 94 percent of Highland Cellular's potential customers in Verizon South's study area would be located in the four highest-density, and thus presumably lowest-cost, wire centers in Verizon South's study area."<sup>11</sup> The Commission found the served-versus-unserved populations to be problematic: Highland could potentially serve 42,128 customers in the four largest wire centers it proposed to serve, but only 2,800 customers in the two remaining low density areas.<sup>12</sup>

Dobson's proposed designation in the Citizens study area does not raise the same concerns as those highlighted in *Highland Cellular*. Dobson will fully serve 25 wire centers in

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(footnote continued)

<sup>8</sup> *Id.* at 8.

<sup>9</sup> Redefinition Petition at 17. In all cases, population density figures are expressed in terms of population per square mile.

<sup>10</sup> *Highland Cellular* at ¶ 31.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*



Citizens' study area. Although it will serve the three wire centers that have the highest population density, 15 of the wire centers it proposes to serve have population densities of fewer than 100 persons per square mile.<sup>13</sup> Dobson's potential customer base in this study area is not concentrated in a few high-density wire centers, as was the case with Verizon South's study area in *Highland Cellular*. Dobson potentially could serve 56,734 customers in the three densest wire centers it is proposing to serve. In the remaining 22 wire centers, Dobson's potential customers number 86,650. Unlike in *Highland Cellular*, Dobson's potential customer base is *greater* in the less-dense wire centers than in the densest wire centers. As a result, Dobson has more than satisfied the cream skimming concerns raised in both *Virginia Cellular* and *Highland Cellular*.

Also, importantly, Citizens' arguments must be taken with a grain of salt. Citizens is by no means a small rural ILEC. The FCC itself has classified Citizens as a mid-sized ILEC.<sup>14</sup> Furthermore, Citizens has grown its business significantly in the past four years, increasing its access lines from 1.0 million in 1999 to 2.4 million by the end of 2003.<sup>15</sup> Relatively speaking, Citizens is a large enough ILEC that any potential impacts in one study area can be averaged over the entire company.

Finally, to the extent that parties addressed cream skimming issues, it must be noted that the Commission has set forth its policies on cream skimming in *Virginia Cellular* and *Highland Cellular*. As demonstrated above, Dobson's proposed designation avoids cream skimming concerns consistent with *Virginia Cellular* and *Highland Cellular*.

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<sup>13</sup> Redefinition Petition at Exhibit E.

<sup>14</sup> Federal Communications Commission, Statistics of Communications Common Carriers at 112, Mar. 2, 2004, *available at* [http://www.fcc.gov/Bureaus/Common\\_Carrier/Reports/FCC-State\\_Link/SOCC/02socc.pdf](http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/SOCC/02socc.pdf).

<sup>15</sup> See Citizens Communications Company, SEC Form 10-K, 2003 Annual Report at 2, Mar. 15, 2004, *available at* <http://www.shareholder.com/czn/edgar.cfm> ("Citizens 10-K").

In addition, Citizens' challenge to the concept of redefinition must be rejected.<sup>16</sup> Dobson is proposing to serve its entire license area and cannot be faulted if its licensed area consists of only a portion of a rural carriers' study area. Citizens, however, attempts to argue that the mobile nature of wireless service removes any benefits that disaggregation may bring.<sup>17</sup> Citizens assumes that customers will have billing addresses in higher cost areas, but will use their wireless service in lower cost areas, stating that "it should be obvious that Dobson will receive disaggregated support targeted to high cost exchanges for providing service in the more densely populated, lower cost exchanges."<sup>18</sup> Citizens is making a fairly large set of assumptions, including that: (1) a majority of customers would have to sign up for service using billing addresses in high-cost areas; (2) those customers would need to use such service primarily outside of this high-cost area; and (3) the reverse (*i.e.*, customers signing up for service with billing addresses in lower cost areas and using their service in higher cost areas) would not occur, thereby preventing the "evening out" of such scenarios. Citizens provides absolutely no evidence for these assumptions.

In fact, rural LECs' own data reveal that a significant percentage of rural customers "rarely" or "never" use the landline phone in their homes due to wireless displacement –

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<sup>16</sup> Citizens Comments at 7-8. Citizens also argues that a carrier must serve the entire study area of a rural carrier because rural carriers enjoy special status under the Telecommunications Act of 1996. *Id.* at 10-11. Dobson noted in its Redefinition Petition that Congress mandated the public interest analysis for ETC designation in rural areas to protect the special status of rural carriers. As such, if the FCC finds that Dobson meets the public interest requirements, the FCC "will have duly considered the special status of the rural carrier." Redefinition Petition at 18. Dobson's arguments regarding a rural carrier's special status do not differ in any respect to the same arguments made by Virginia Cellular and Highland Cellular in their petitions for ETC designation. Petition for Designation as an Eligible Telecommunications Carrier in the State of Virginia of Virginia Cellular LLC, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, at 13-14 (filed Apr. 26, 2002); Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia of Highland Cellular, Inc., *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, at 14-15 (filed Sept. 19, 2002).

<sup>17</sup> Citizens Comments at 9-10.

<sup>18</sup> *Id.* at 10.

suggesting that rural customers are making significant use of their wireless phones while at home.<sup>19</sup>

In addition, logic suggests that customers living in higher cost areas are probably not taking their personal cellular phones to work and using them at length. Individuals who frequently use their cell phones for work probably receive service through their employer. In those cases, assuming that the employer's billing address is in a lower cost area, the customer probably uses this unsupported phone at home in a higher cost area. Moreover, to the extent that wireless customers are using their phones away from their residences, the use probably is occurring en route to or from work or other destinations. In such cases, the public safety benefits of having access to high quality wireless services that provide continuous access to emergency services outweigh any detrimental use outside of supported areas.

Furthermore, the decision to have and use wireless service is a competitive choice. If the FCC were to take Citizens' argument to heart, no wireless carrier would be designated as an ETC – a result not sustainable by the statute and certainly not acceptable to consumers. Section 254(b)(3) states that consumers in all areas of the nation, particularly in rural, insular and high-cost areas, “should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”<sup>20</sup> To accept Citizens' argument and deny support to wireless carriers simply because it is *possible* that a

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<sup>19</sup> National Telecommunications Cooperative Association 2004 Rural Youth Telecommunications Survey at 4, *available at* [http://www.ntca.org/content\\_documents/2004rural youth telecommunications survey.pdf](http://www.ntca.org/content_documents/2004rural youth telecommunications survey.pdf) (“NTCA 2004 Rural Youth Survey”) (noting that 20 percent of those surveyed said they “rarely” use their landline phone in their home and 14 percent said they “never” use their landline phone in their homes).

<sup>20</sup> 47 U.S.C. § 254(b)(3).

customer would use a supported service in unsupported areas would effectively deny rural customers reasonably comparable service at reasonably comparable rates.

Finally, the Commission must reject any and all claims that Dobson could provide service throughout a rural ILECs' study area, even in areas where it is not licensed, through resale.<sup>21</sup> First, neither *Virginia Cellular* nor *Highland Cellular* requires resale for this purpose. Moreover, the FCC's rules no longer require wireless carriers to resell their service.<sup>22</sup> As such, a CETC is by no means assured of continued cooperation from other wireless carriers in order to continue providing service outside of its licensed area. Moreover, outside of the licensed area, a carrier cannot control service quality or the service offerings made by its competitors, making it impossible to ensure the required level of service to a requesting customer.

**B. Dobson Has Shown That It Meets the Public Interest Test Throughout its Designated Area.**

Verizon argues that an ETC applicant must provide specific evidence that the public interest test is met in each particular study area where it seeks designation.<sup>23</sup> Although Verizon calls into question whether other ETC applicants have made or will make sufficient network investment in the specific rural areas where they now seek designation, Verizon does not mention Dobson in this regard.<sup>24</sup> This is not surprising, since Dobson's commitment to and achievement in providing excellent service in rural areas is well established.

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<sup>21</sup> Citizens Comments at 11-12.

<sup>22</sup> 47 C.F.R. § 20.12; 2002 Biennial Regulatory Review, WT Docket No. 02-310, GC Docket No. 02-390, *Staff Report of the Wireless Telecommunications Bureau*, 18 FCC Rcd 4243, 4249 (WTB 2002) (noting that the Commission sunsetted its wireless resale rule, Section 20.12, which prohibits CMRS providers from unreasonably restricting resale of their services, on November 24, 2004).

<sup>23</sup> Verizon Comments at 8-9.

<sup>24</sup> *See id.*

Verizon adds that no competitive benefit would be gained by Dobson's designation as an ETC because competition already exists without high-cost funding in the rural areas where Dobson is seeking ETC designation.<sup>25</sup> Verizon cites to Dobson's Petitions, out of context, for the proposition that there has been "greater facilities deployment by large national carriers of their own facilities along the [highway] corridors."<sup>26</sup> Facilities along the highway corridors are not the same, however, as facilities in other parts of rural America where people live and work. Residents in rural areas need coverage throughout the area in which they live, not just on the heavily traveled roads or more densely populated areas. Rural customers want and deserve service that connects them to public safety personnel on the back country roads and in more remote areas near their homes, which may be located too far from a highway in order to receive service from the major carriers.

Dobson's business plan from its inception has been to provide service to rural America throughout its licensed areas. That plan continues today. However, the improvement in wireless technology and the broader range of services that are available in wireless devices has placed an additional capital expenditure and operating cost burden on wireless companies. The lower density, rural areas do not have the economic scale to make the deployment of this advanced technology as efficient as it is in urban areas. Given the universal service objective of providing rural areas with comparable service and products to those in urban areas, Dobson's request for ETC status in New York is entirely appropriate.

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<sup>25</sup> *Id.* at 9-10.

<sup>26</sup> Redefinition Petition at 21.

**C. Dobson Will Provide High Quality Competitive Services to Rural Customers in New York.**

NYSTA notes that Dobson is not subject to the New York Telephone Fair Practices Act, which landline LECs must comply with in New York.<sup>27</sup> NYSTA lists several requirements imposed by this Act that are not applicable to wireless carriers because the New York Public Service Commission (“NY PSC”) does not exercise jurisdiction over wireless carriers.<sup>28</sup> NYSTA argues that designation of Dobson in the proposed study areas will do nothing to improve service quality for customers because of the “lighter regulatory load” to which wireless carriers are subject.<sup>29</sup>

Dobson is constrained by nationwide competitive pressures. If customers are unhappy with Dobson’s service quality, those consumers will take their business to another wireless carrier and Dobson will collect no support for serving them.<sup>30</sup> Commitments to regulatory bodies are no more of an incentive to provide high-quality services than the need to ensure satisfied customers in the highly competitive wireless environment. ILECs, who receive a guaranteed rate of return and historically have been monopolies, are subject to more stringent regulatory requirements than wireless carriers who have always operated in a competitive industry.<sup>31</sup> Just because ILECs face more state regulation does not mean that wireless carriers

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<sup>27</sup> NYSTA Comments at 9.

<sup>28</sup> *Id.* (noting that landline LECs and ETCs in New York have the following requirements imposed upon them: service order, reporting on customer trouble per 100 access lines, directories, installation performance and answer time performance).

<sup>29</sup> *Id.*

<sup>30</sup> Now that rural carriers are subject to local number portability, customers can easily switch to another wireless carrier while continuing to keep their telephone number.

<sup>31</sup> If the rural ILECs can convince the NY PSC that their rates should be deregulated, which would make them subject to fewer regulations, then they should try to do so. Dobson would welcome such change.

provide a lower quality service. Greater regulation imposed upon ILECs is not a reason for the Commission to “regulate up” for wireless ETCs.<sup>32</sup>

Moreover, questions that arise regarding Dobson or any other competitive ETCs’ ability to provide quality service with the high-cost support received can be addressed, if necessary, through an audit. The Commission has the right under its rules to audit both contributors and carriers and “may suspend or delay discounts, offsets, and support amounts provide to a carrier if the carrier fails to provide adequate verification of discounts, offsets or support amounts provided upon reasonable request.”<sup>33</sup> Furthermore, Dobson committed in its Petitions to report on the number of consumer complaints it receives per thousand handsets, consistent with *Virginia Cellular* and *Highland Cellular*.

### **III. ISSUES UNRELATED TO DOBSON’S PETITIONS SHOULD BE ADDRESSED IN THE *JOINT BOARD NPRM*, NOT THIS PROCEEDING**

Some commenters raise arguments that relate not to the merits of Dobson’s petition for ETC designation, but rather to the Commission’s basic rules and procedures for designating ETCs. These issues are before the Commission in the *Joint Board NPRM*<sup>34</sup> and are not relevant to the merits of Dobson’s ETC Petitions.

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<sup>32</sup> To the extent that competition from other carriers, such as wireless carriers, undermines the need for extensive regulation of ILEC service quality, that can be addressed before the NY PSC.

<sup>33</sup> 47 C.F.R. § 54.707.

<sup>34</sup> Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Notice of Proposed Rulemaking*, FCC 04-127 (rel. June 8, 2004) (“*Joint Board NPRM*”).

**A. ETC Designations Should Not be Held in Abeyance Pending the Current Rulemaking.**

The Communications Act *requires* designation of competitive ETCs if the requirements of the Commission's rules are met,<sup>35</sup> and the Commission has valid ETC designation rules in place. Specifically, current law and precedent provide for ETC designation as long as the ETC providing the required services meets the stringent public interest test.<sup>36</sup> Indeed, in the *Virginia Cellular* and *Highland Cellular* proceedings, the Commission strengthened the public interest criteria for ETC designation, and therefore there is no reason to not move forward under the exacting requirements currently in place for ETC designation.<sup>37</sup> If these commenters take issue with the stringent requirements the Commission set out in *Virginia Cellular* and *Highland Cellular*, their concerns should have been raised in petitions for reconsideration of those decisions or reserved for the *Joint Board NPRM*. Further delay in processing pending ETC petitions, however, would be contrary to law.

**B. Competitive ETC Designations Are No Threat to the Sustainability of the Fund.**

Dobson's Petitions address the impact on the universal service fund of granting its designations – which impact would, of course, be negligible.<sup>38</sup> Nevertheless, some commenters

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<sup>35</sup> 47 U.S.C. § 214(e) (specifically contemplating the designation of ETCs provided the relevant criteria are satisfied).

<sup>36</sup> *Id.* at § 214(e)(6); 47 C.F.R. § 54.101(a); *Virginia Cellular*, 19 FCC Rcd at 1574-80 (establishing public interest criteria); *Highland Cellular* at ¶¶ 20-33 (elaborating on public interest requirements).

<sup>37</sup> Indeed, *Virginia Cellular* and *Highland Cellular* both make clear that ETC designations are subject to future changes in the broader rulemaking proceeding. *Virginia Cellular*, 19 FCC Rcd at 1569; *Highland Cellular* at ¶ 12.

<sup>38</sup> Redefinition Petition at 23-24; No Redefinition Petition at 16-17.



argue that the Commission should consider the impact of all pending ETC petitions,<sup>39</sup> or even all potential ETC petitions, in considering any particular petition.<sup>40</sup>

First, as noted above, these arguments have no bearing on the merits of Dobson's individual petition and are not properly addressed here.<sup>41</sup> Moreover, even assuming the accuracy of the commenters' own funding estimates, the impact on the fund of ETC designation will be moderate at best.

For example, Verizon estimates that, if all of the currently pending ETC petitions were granted, the size of the rural high cost fund would increase by approximately \$430 million per year.<sup>42</sup> The high cost fund, however, currently amounts to nearly \$4 billion per year.<sup>43</sup> Thus, even if Verizon's inflated estimate is correct (which Dobson does not believe<sup>44</sup>), granting *all* of the pending ETC petitions would increase the size of the fund by scarcely more than 10 percent.

Even more wildly speculative is NYSTA's assertion that, if *all* CMRS providers nationwide were to apply for and receive ETC status, the annual cost of the high cost fund would increase by \$2 billion.<sup>45</sup> Even assuming *arguendo* the accuracy of this dubious estimate, however, this would mean that, even if *every* CMRS carrier in the country received ETC designation, competitive ETCs still would receive *only about one-third* of all high cost funding,

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<sup>39</sup> See, e.g., Verizon Comments at 3-7.

<sup>40</sup> See, e.g., NYSTA Comments at 11.

<sup>41</sup> See, e.g., *Virginia Cellular*, 19 FCC Rcd at 1577-78.

<sup>42</sup> Verizon Comments at 3.

<sup>43</sup> See, e.g., USAC, Federal Universal Service Support Mechanism Fund Size Projections for the Third Quarter 2004, CC Docket No. 96-45 (filed Apr. 30, 2004).

<sup>44</sup> Written *Ex Parte* Comments of Dobson Cellular Systems, Inc., *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, at 4 (filed June 24, 2004) ("Dobson *Ex Parte*").

<sup>45</sup> NYSTA Comments at 11.

with the remaining two-thirds of the fund going to rural ILECs.<sup>46</sup> This apparently would be true even though there are up to six CMRS carriers serving most areas, but only one ILEC. Even if accurate, then, these commenters' doomsday estimates are perhaps the best possible demonstration that funding competitive ETCs is no real threat to the sustainability of the fund. As can be seen, even under the worst-case scenarios presented by commenters, the increase in support levels from ETC designation will be relatively modest. If anything, the fund is threatened by bloated payments to rural ILECs, which have increased by over \$1 billion in the last three years.<sup>47</sup>

The modest but rising level of support flowing to competitive ETCs should be viewed as a sign of the Joint Board's and the Commission's success in achieving Congressional goals. The goal of the 1996 Act was to introduce competition into local telecommunications markets, including in areas that receive universal service support.<sup>48</sup> Indeed, it would be a sign of failure if, eight years after the passage of the 1996 Act's market-opening provisions, ILECs continued to receive virtually all of the high-cost support. It would be tantamount, for example, to the granting of no section 271 petitions after a similar period of time. A relatively modest rise in support to competitive carriers is an expected consequence of Congress's policies, not a cause for alarm.

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<sup>46</sup> If the high cost fund grew by \$2 billion from its current \$4 billion level, the fund would total \$6 billion, of which CETCs would collect \$2 billion, or one-third.

<sup>47</sup> See *Dobson Ex Parte* at 3-4.

<sup>48</sup> 47 U.S.C. § 214(e) (requiring designation of competitive ETCs in most areas, and permitting such designation in rural telephone company study areas where it would serve the public interest).

### C. Competitive Benefits Are Properly Part of the Public Interest Analysis.

Like the arguments discussed above, Citizens' assertion that it is improper to consider competition as part of the public interest analysis<sup>49</sup> goes to the broader rulemaking proceeding, and is properly viewed as an untimely petition for reconsideration of *Virginia Cellular* and *Highland Cellular*. These issues are not properly raised in the proceeding to consider Dobson's individual petitions.

Indeed, the Commission has held repeatedly that competition benefits consumers in the designation of competitive ETCs.<sup>50</sup> Bringing consumers the benefits of competition is a central goal of the regulatory reforms enacted by Congress in 1996<sup>51</sup> and an important element in most types of public interest analysis the Commission performs.<sup>52</sup> It would be a striking departure indeed if it were irrelevant to the analysis of ETC petitions. Dobson does not fault Citizens, however, for failing to understand the consumer benefits a competitive market can bring; as a rural ILEC, Citizens has little, if any, experience competing for its customers. Dobson has learned from its own experience competing in the vigorous wireless marketplace, however, that competition brings lower prices, better service, and greater innovation. Rural consumers are entitled to these benefits as well.

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<sup>49</sup> Citizens Comments at 3-5.

<sup>50</sup> See, e.g., *Virginia Cellular*, 19 FCC Rcd at 1575-76; *Highland Cellular* at ¶ 22 (both weighing the "benefits of increased choice" in performing the public interest analysis for ETC designation).

<sup>51</sup> The stated purpose of the 1996 Act was to "promote competition and reduce regulation." Telecommunications Act of 1996, Pub. L. No. 104-104 (preamble), 110 Stat. 56 (1996) (emphasis added).

<sup>52</sup> For example, section 10(b) specifies that the promotion of competition can be the basis of a finding that the public interest supports forbearance from a statutory requirement. 47 U.S.C. § 160(b). The Commission also has considered the public interest in competition in requiring wireless carriers to implement number portability. Verizon Wireless's Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation, WT Docket No. 01-184, *Memorandum Opinion and Order*, 17 FCC Rcd 14972, 14981 (2002).

Citizens argues that consideration of competitive benefits of ETC designation “nullifies” the public interest analysis in rural telephone company study areas,<sup>53</sup> but its argument proves too much. Indeed, Citizens would be correct if the Commission designated ETCs based *solely* on the fact that they bring competitive benefits to rural areas, but the Commission’s analysis is not nearly so simplistic. The Commission considers a multitude of factors before designating wireless ETCs in rural study areas, such as the benefits of mobility, the benefits of larger local calling areas, and the ability to remain operational in an emergency.<sup>54</sup>

Citizens’ argument that universal service is meant to fund “consumers, not carriers” is similarly meritless.<sup>55</sup> Competitive ETCs only receive support to the extent they serve rural consumers and are required to use that support only for the provision of service to such rural consumers.<sup>56</sup> The Commission’s public interest criteria ensure that no carrier is designated to receive support that does not serve the goals of universal service.

Citizens also states quixotically that Dobson does not compete with Citizens, and that Dobson only is eligible to receive support if it does so.<sup>57</sup> The former point is belied by the facts, and the latter is unsupported in the law. Legally, there is no requirement that an ETC applicant like Dobson compete with the ILEC in order to qualify for universal service support. The statute simply requires that support be used to ensure that consumers in rural, insular, and high cost areas have access to telecommunications services that are comparable to those services available in urban areas. Because urban consumers have access to competitive wireless service as an

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<sup>53</sup> Citizens Comments at 4-5.

<sup>54</sup> See, e.g., *Virginia Cellular*, 19 FCC Rcd at 1576-77; *Highland Cellular* at ¶¶ 23-24.

<sup>55</sup> Citizens Comments at 4.

<sup>56</sup> 47 U.S.C. § 254(e); 47 C.F.R. § 54.7.

alternative or adjunct to their landline service, statutory universal service principles entitle rural consumers to the same.

Irrespective of the point's legal relevance, it is also factually wrong. Rural LECs' own data reveal that wireless carriers such as Dobson compete directly with rural wireline carriers such as Citizens. In Citizens' own Form 10-K filing with the SEC, Citizens stated that "[c]ompetition from wireless companies . . . is increasing in all markets. Our ILEC business has been experiencing declining access lines, switched access switched minutes of use, and revenues because of . . . changing consumer behavior such as displacement of wireless use."<sup>58</sup> In addition, the NTCA, the "preeminent telecommunications industry organization dedicated exclusively to representing and serving the interests of the nation's small, rural incumbent local exchange carriers," told its constituency in its 2004 Rural Youth Telecommunications Survey that "wireless displacement of wireline services is not just a threat, but an emerging reality."<sup>59</sup> The survey notes that "wireline displacement is growing at an alarming rate among rural youth, with 20% of survey takers saying they 'rarely' use the landline phone in their residences, up from just 13% last year. Those indicating they 'never' use the landline phone in their homes also jumped sharply, from 6% last year to 14% this year."<sup>60</sup>

Thus, both Citizens' and the rural ILEC industry's own data show the fallacy of Citizens' assertion that wireless carriers do not compete with LECs.<sup>61</sup> Despite Citizens' assertion to the

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(footnote continued)

<sup>57</sup> Citizens Comments at 5-6.

<sup>58</sup> Citizens 10-K at 6-7.

<sup>59</sup> NTCA 2004 Rural Youth Survey at 2, 4.

<sup>60</sup> *Id.* at 4.

<sup>61</sup> Interestingly, these data also reveal the fallacy in the rural LECs' arguments that rural wireless customers typically do not use their wireless phones at their residences. *See supra* pages 7-8.

contrary,<sup>62</sup> both its own 10-K and the NTCA data reveal that consumers view wireless service, in rural areas, as a substitute for landline service. As a result, rural consumers clearly will benefit from granting Dobson access to universal service support. In the face of these data and the statements in its 10-K, Dobson believes it is more likely that Citizens' arguments are intended to protect itself from the very real threat presented by competitive ETCs such as Dobson. The protectionism Citizens proffers would benefit only itself as the incumbent carrier, however, at the expense of consumers – precisely the accusation Citizens levels at Dobson.

**D. Requiring Dobson to Serve Areas Outside Its Licensed Area, or Requiring Equal Access, Will Serve No Public Interest Benefit.**

Suggestions that Dobson should be required to serve territory outside its licensed area, or provide equal access, are properly raised in the broader rulemaking proceeding, and are irrelevant to Dobson's individual designation. The Commission already has decided that neither issue is a pre-condition to ETC designation.<sup>63</sup> In addition, both arguments are without substantive merit.

Citizens argues that Dobson should be required to serve portions of Citizens' study areas for which it is not licensed because "[i]t is doubtful that a CLEC ETC applicant would be successful in seeking relief from its obligation to serve the entirety of [a rural LEC's] study area on the basis that its lack of a CMRS license prevents it from providing service."<sup>64</sup> The comparison is, obviously, apples and oranges. A more apt analogy would be requiring a CLEC, as a condition for ETC designation, to serve territory outside of the area for which it has received a certificate of public convenience and necessity ("CPCN"). No one would argue that a CLEC

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<sup>62</sup> See Citizens Comments at 5.

<sup>63</sup> See, e.g., *Virginia Cellular*, 19 FCC Rcd at 1572-73.

<sup>64</sup> Citizens Comments at 11.

should be required to serve outside its certificated area in order to be designated an ETC. By the same token, there is no rational basis to require a CMRS applicant to serve territory outside its licensed area as a condition of ETC certification.

Finally, some commenters argue that Dobson should be required to provide equal access to long distance carriers if it is designated an ETC. This issue, too, is pending before the Commission in the current rulemaking proceeding.<sup>65</sup> Under the current rules, equal access is not a supported service that ETCs must provide.<sup>66</sup> As Dobson and other CMRS carriers have argued, because of the way CMRS service is priced, packaged, and marketed, requiring CMRS carriers to provide equal access would have no public interest benefits.<sup>67</sup> There is simply no basis to require Dobson to provide equal access in the context of its ETC designation.

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<sup>65</sup> *Joint Board NPRM*, in attached Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Recommended Decision*, FCC 04J-1, at ¶ 28 (rel. Feb. 27, 2004).

<sup>66</sup> *See* Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Order and Order on Reconsideration*, 18 FCC Rcd 15090, 15104 (2003).

<sup>67</sup> Comments of Dobson Communications Corporation on Supported Services Recommended Decision, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, at 15-20 (filed Apr. 14, 2003).

## **CONCLUSION**

For the foregoing reasons, the Commission should grant Dobson's ETC Petitions.

Respectfully submitted,

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